

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**FIRST APPEAL Nos. 698 to 709 of 2007****For Approval and Signature:****HONOURABLE MR.JUSTICE J.M.PANCHAL****HON'BLE SMT. JUSTICE ABHILASHA KUMARI**

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1 Whether Reporters of Local Papers may
be allowed to see the judgment ?

2 To be referred to the Reporter or not
?

3 Whether their Lordships wish to see
the fair copy of the judgment ?

Whether this case involves a
substantial question of law as to the
4 interpretation of the constitution of
India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the
civil judge ?

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SPECIAL LAQ OFFICER & 1 - Appellant(s)

Versus

THAKORE HIRAJI PUNAJI - Defendant(s)

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Appearance :

Mr.Sunit S.Shah, learned Government Pleader,for the
appellants in First Appeal Nos.698 to 703 of 2007

Ms.Tanuja N.Kachchhi, learned Assistant Government
Pleader,for the appellants in First Appeal Nos.704 to
709 of 2007

MR AJ PATEL for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 07/02/2007

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. Admitted. Mr.A.J.Patel, learned counsel, waives service of notice on behalf of the claimant/claimants in each appeal. Having regard to the facts of the case, the appeals are heard today.

2. What is challenged in these appeals filed under Section 54 of the Land Acquisition Act, 1894 ("the Act" for short) read with Section 96 of the Code of Civil Procedure, 1908 is the legality of the common judgment and award dated September 30,2005 rendered by the learned 4th Addl.Senior Civil Judge, Ahmedabad (Rural) at Navrangpura in Land Acquisition Case Nos. 742/98 to 753/98 by which the claimants are awarded additional amount of compensation at the rate of Rs. 19/- per Sq.Mtr. for irrigated as well as non-irrigated lands, over and above the compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.1.87 paise per Sq.Mtr. for irrigated lands and Rs.1.25 paise per Sq.Mtr. for non-irrigated lands by his award dated December 26,1996.

3. The Executive Engineer, Narmada Project, Division No.4/4, Mehsana proposed to the State Government to acquire lands of Village - Juna Padar, Taluka Viramgam, District- Ahmedabad for the public purpose of construction of Canal under the Narmada Project. On scrutiny of the said proposal, the State Government was satisfied that the lands of Village - Juna Padar mentioned in the said proposal were likely to be needed for the said public purpose. Therefore, a Notification under Section 4(1) of the Act was issued which was published in the Official Gazette on January 31, 1994. The land owners were thereafter served with the notices under Section 4 of the Act. On receipt of the notices, they opposed the proposed acquisition. After considering their objections, a report as contemplated by Section 5A(2) of the Act was forwarded by the Special Land Acquisition Officer to the State Government. On perusal of the said report, the State Government was satisfied that the lands of Village -Juna Padar, which were specified in the Notification published under Section 4(1) of the Act, were needed for the public purpose of construction of the Canal under the Narmada Project. Therefore, a declaration under Section 6 of the Act was made which was published in the Official Gazette

on January 20, 1995. The interested persons were thereafter served with the notices for determination of the compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs. 25/- per Sq.Mtr. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated December 26, 1996 offered compensation to the claimants at the rate of Rs. 1.87 paise per Sq.Mtr. for irrigated lands and Rs. 1.25 paise per Sq.Mtr. for non-irrigated lands. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly references were made to the District Court, Ahmedabad (Rural), where they were registered as Land Acquisition Case Nos. 742/98 to 753/98.

4. On behalf of the claimants witness Hiraji Punaji Thakore was examined at Exh.30. This witness

mentioned in his testimony that the lands acquired were fertile and irrigated lands. According to him, water was available for the purpose of irrigation and, therefore, each claimant was able to raise three crops in a year, such as cotton, millet, wheat, cumin seeds.etc. The witness claimed that each claimant was growing crop of cotton, juwar, millet etc. during rainy season and was able to get 40 Maunds to 45 Maunds of cotton, price of which was Rs.40/- per 20 Kgs. The witness also stated that each claimant was able to raise 50 Maunds of Juwar, price of which was Rs.150/- per 20 Kgs. and that from the sale of sheaves also the claimant was able to get substantial income as the price of 100 sheaves was Rs.150/-. The witness further claimed that during winter season each claimant was able to raise wheat, cumin seeds etc. According to this witness, each claimant was able to raise crop of 60 Maunds of wheat, price of which was Rs.200/- per 20 Kgs. and that each claimant was also able to raise crop of 10 Maunds of cumin seeds, price of which was Rs.2000/- to Rs.2500/- per 20 Kgs. The witness further stated that during summer season, each claimant was able to raise crop of juwar and millet and was earning net income of Rs.20,000/- from the sale of those crops. According to this

witness, the boundary of this village was touching the boundary of village Bhojva. The witness claimed that the lands of village Bhojva were also acquired by the Government and that the Reference Court had awarded additional amount of compensation to the claimants at the rate of Rs.18/- per sq.mt. over and above the compensation awarded to them by the Special Land Acquisition Officer and, therefore, on the basis of judgment of the Reference Court relating to the lands of village Bhojva, the claimants were entitled to the enhanced compensation. It was also mentioned by the said witness that the award of the Reference Court relating to the lands of village Bhojva was confirmed by the High Court. Though this witness was cross-examined in detail, nothing substantial could be elicited.

5. On behalf of the acquiring authorities, witness Sashikant Punamchand Mahant, who was then discharging duties as Deputy Executive Engineer, was examined at Exh.32. Though the witness claimed that the lands of village Bhojva were of better quality than the lands of village Juna Padar, no evidence was adduced by him to substantiate the same. In cross-examination it was admitted by him that the boundaries of village Juna

Padar and boundaries of village Bhojva were adjoining each other.

6. On appreciation of the evidence adduced by the parties, the Reference Court was of the opinion that previous award of the Reference Court, as confirmed by the High Court, was a relevant piece of evidence for the purpose of determining the market value of the lands acquired in the instant case. On the basis of the said previous award, the Reference Court had awarded additional amount of compensation to the claimants, as mentioned in the introductory part of this judgment, giving rise to the above numbered appeals.

7. This Court has heard Ms.Tanuja N.Kachchhi, learned Assistant Government Pleader for the appellants and Mr.A.J.Patel, learned Counsel for the claimant/claimants in each appeal. This Court has also taken into consideration the paper book supplied by the learned counsel for the claimants, which include documentary as well as oral evidence adduced by the parties before the Reference Court.

8. Though the quantity of different crops grown and

their prices prevailing at the relevant time could not be proved satisfactorily by the claimants, there is no manner of doubt that the lands acquired were irrigated lands and that the claimants were able to raise different crops thereon as mentioned by witness Hiraji Punaji Thakore in his testimony, which was recorded at Exh.30. The fact that different crops were being raised by the claimants on the lands acquired also stands corroborated by the contents of Village Form No.VII-XII produced by the witness for the claimants at Exh.13 to Exh.25. The record does not indicate that the claimant/claimants had claimed enhanced compensation on the basis of comparable sale instances nor enhanced compensation was claimed on the basis of yield. What was relied upon by the claimants in support of their claim for enhanced compensation was previous award of the Reference Court relating to the lands of village Bhojva, as confirmed by the High Court. It is true that it was not stated by the witness for the claimants that the lands, which were acquired from village Bhojva, were similar in all respects to the lands acquired in the instant case from village Juna Padar. However, if one peruses Exh.26 it becomes clear that the lands which were acquired from village Bhojva were almost

similar in all respects to the lands acquired in the instant case. Exh.26 indicates that the lands of village Bhojva were acquired for the purpose of construction of Goraiya Branch Canal under Narmada Project pursuant to Notification issued under Section 4 of the Act which was published in the Official Gazette on April 26, 1993. Therein the Special Land Acquisition Officer had offered compensation to the claimants at the rate of Rs.1.50 Ps.per sq.mtr. by his award dated February 12,1996. Feeling aggrieved the claimants had sought references. Accordingly references were made to the District Court, Ahmedabad (Rural) where they were registered as Land Acquisition Case Nos.2236 to 2253 of 1996. On behalf of the claimants witness Parbatsinh Laxmansinh Zhala was examined at Exh.19 whereas on behalf of the acquiring authorities witness Dahyabhai Naranbhai Patel was examined at Exh.47, who had produced certain documentary evidence for the consideration of the Reference Court. The judgment further makes it clear that the claimants, whose lands were acquired from village Bhojva, were raising different crops such as millet, cumin seeds, cotton, vegetables, sheaves, etc. Therefore, the claimants cannot be non-suited on the ground that the witness for the

claimants did not state before the Court that the lands, which were acquired from village Bhojva, were similar in all respects to the lands acquired in the instant case.

9. On consideration of the evidence produced by the parties before the Reference Court, this Court is of the opinion that the award relating to the lands of village Bhojva is a relevant piece of evidence and was rightly considered by the Reference Court for the purpose of determining the market value of the lands acquired in the instant case. However, the evidence also shows that there was a distance of about 4 to 5 Kms. between the lands which were acquired from village Bhojva and the lands which were acquired in the instant case. It is well settled that previous award of the Reference Court relating to the lands of a village, which has attained finality, can be taken into consideration for the purpose of determining market value of the lands acquired from the adjoining village. On the facts and in the circumstances of the case, this court is of the opinion that on the basis of the previous award of the Reference Court, the claimants would be entitled to compensation in all at the rate of Rs.17/- per sq.mtr. Therefore, the

appeals filed by the acquiring authorities deserve to be accepted in part.

10. For the foregoing reasons, all the appeals partly succeed. The common judgment and award dated September 30, 2005 rendered by the learned 4th Addl.Senior Civil Judge, Ahmedabad (Rural) at Navrangpura in Land Acquisition Case Nos. 742/98 to 753/98 awarding in all compensation at the rate of Rs.20.87 Ps. per sq.mts. for irrigated lands and Rs.20.25 Ps. per sq.mts. for non-irrigated lands, is hereby modified and it is held that the claimants in all would be entitled to compensation at the rate of Rs.17/- per Sq.Mtr. The other benefits granted to the claimants by the impugned award are not interfered with at all and are hereby confirmed. The appeals are allowed to the extent indicated herein-above. There shall be no orders as to costs. The Registry is directed to draw the decree in terms of this judgment immediately.

(J.M.Panchal, J)

(Smt.Abhilasha Kumari, J)

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